

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF COMPREHENSIVE)	APPEAL NO. 06-A-2052
ADVOCACY INC. from the decision of the Board of)	FINAL DECISION
Equalization of Ada County for tax year 2006.)	AND ORDER

CHARITABLE EXEMPTION APPEAL

THIS MATTER came on for hearing September 20, 2006, in Boise, Idaho, before Hearing Officer Steve Wallace. Board Members Lyle R. Cobbs and David E. Kinghorn participated in this decision. Executive Director James Baugh appeared for Appellant. Deputy Prosecuting Attorney Janice Newell appeared for Respondent Ada County. This appeal is taken from a decision of the Ada County Board of Equalization (BOE) denying the protest of the valuation for taxing purposes of property described as Parcel No. P1CO + ADIN01.

The issue on appeal is whether the subject personal property qualifies for an exemption from property taxes pursuant to Idaho Code § 63-602C.

The decision of the Ada County Board of Equalization is affirmed.

FINDINGS OF FACT

Comprehensive Advocacy, Inc., hereafter referred to as CO-AD, is a private, nonprofit organization under Section 501(c)(3) of the Internal Revenue Code. CO-AD had been granted a charitable exemption from property taxes by Ada County during the entire 28 years of its existence since it was established in 1977. CO-AD receives virtually all of its funding from federal grants and provides free advocacy and legal services to individuals with developmental disabilities or mental illness. Approximately 99% of CO-AD's total revenue is obtained from federal government grants. CO-AD is recognized by the government as having special status to protect the legal rights of people with disabilities.

CO-AD applied for a property tax exemption on its personal property. CO-AD owns no real property. The application for property tax exemption was received by Ada County on April

13, 2006. As part of that application, CO-AD completed a property tax exemption worksheet prepared by Ada County and CO-AD admitted that it receives very few private donations. Rather, its primary source of revenue comes from federal grants. Recipients are not required to pay any fee for CO-AD's services.

Ada County estimated the value of personal property owned by CO-AD at \$31,800, resulting in a personal property tax bill of \$561.16.

Ada County denied CO-AD's request for a charitable exemption from personal property taxes and CO-AD appealed.

There is no dispute of facts and the decision in this case turns upon conclusions of law.

CONCLUSIONS OF LAW

The issue in this appeal is whether CO-AD is entitled to a charitable exemption from property taxes pursuant to Idaho Code §63-602C.

Idaho Code §63-602C states:

The following property is exempt from taxation: property belonging to any fraternal, benevolent, or charitable corporation or society, the World War veteran organization buildings and memorials of this state, used exclusively for the purposes for which such corporation or society is organized;

The Idaho Supreme Court has had occasion to interpret the charitable exemption statute in various cases.

In the case of Appeal of Sunny Ridge Manor, Inc., 106 Idaho 98, 675 P.2d 813 (S.Ct. 1984), a retirement center appealed an order of the Board of Equalization denying its tax exempt status. Sunny Ridge was a non-profit corporation which provided care and support to elderly individuals. Sunny Ridge was a non-profit Idaho corporation, but charged its members fees to cover its operating expenses and services. The Idaho Supreme Court noted that, to be classed

as charitable, an organization need not provide just monetary aid to the needy. A charitable organization is one which may provide any of a number of services of public benefit for educational, religious, physical or social benefit. 106 Idaho 98. The Court ruled that a number of factors must be considered in determining whether an organization is entitled to an exemption from property taxes based upon a charitable status. The Court stated:

A number of factors must be considered: (1) the stated purposes of its undertaking, (2) whether its functions are charitable (in the sense just discussed), (3) whether it is supported by donations, (4) whether the recipients of its services are required to pay for the assistance they receive, (5) whether there is a general public benefit, (6) whether the income received produces a profit, (7) to whom the assets would go upon dissolution of the corporation, and (8) whether the "charity" provided is based on need. 106 Idaho 100.

The court specifically stated that determination of charitable status must be decided on a case-by-case basis and that the list of factors is not exclusive.

In Sunny Ridge, the Idaho Supreme Court reaffirmed well established law that statutes granting tax exemptions must be strictly construed against a tax payer and in favor of the State. 106 Idaho 100-101. Exemptions are never presumed and judicial construction cannot be used to create an exemption not authorized by statute. The Court ruled that Sunny Ridge was not entitled to a charitable exemption because a significant portion of payment of costs of operation and retirement of debt came from its own residents. The Court also determined Sunny Ridge did not provide a general public benefit to the community at large.

In the present case, the only significant area of dispute is whether CO-AD is supported by donations.

In the case of Housing Southwest v. Washington County, 128 Idaho 335, 913 P.2d 68 (S.Ct. 1996), the Idaho Supreme Court considered an appeal of a District Court decision which found Housing Southwest was entitled to a charitable property tax exemption pursuant to Idaho

Code §63-105C. The District Court decision was reversed. In that case, Housing Southwest owned a six-unit, low-income housing facility for senior citizens and disabled persons. The Board of Equalization for Washington County denied Housing Southwest's application for a charitable tax exemption and the Idaho Board of Tax Appeals affirmed the ruling of the Washington County Board of Equalization. The Board of Tax Appeals ruled that no charitable functions were performed by Housing Southwest because the organization was not relieving any governmental obligations since the government provided housing subsidies and the construction loan. The District Court overturned the ruling of the Board of Tax Appeals; but, the Idaho Supreme Court reversed the District Court decision.

In its analysis, the Idaho Supreme Court reaffirmed the eight factors set forth in Sunny Ridge. 128 Idaho 338. In Housing Southwest, the Idaho Supreme Court addressed very directly the situation in which the entity was receiving significant federal money. The Idaho Supreme Court specifically ruled that federal funds are not "donations" within the meaning of the factors necessary to determine whether an organization is entitled to a charitable exemption. The Idaho Supreme Court cited a long line of cases which held that federal subsidies are not donations or public charity. The Idaho Supreme Court stated:

Section 63-105C of the Idaho Code does not require that exempt institutions be supported or maintained by charity or donations. Rather, that element arises from case law. As this Court noted in *Owyhee Motorcycle Club*, the requirement of donations is an important factor, because charitable donations reduce the cost of the service provided, either to the public generally as direct beneficiaries of the service or to taxpayers who would otherwise bear the burden. 123 Idaho at 339.

The Idaho Supreme Court concluded:

. . . There is no legislative direction that indicates federal subsidies qualify as donations. In fact, the burden is merely shifted from one group of taxpayers to another, and government is not relieved of an

obligation it would otherwise have. Housing Southwest does not qualify as a charitable organization pursuant to Section 63-105C of the Idaho Code.

A similar result was reached in Community Action Agency, Inc., v. Board of Equalization of Nez Perce County, 138 Idaho 82, 57 P.3d 793 (S.Ct. 2002). In that case, Nez Perce County revoked a previously granted property tax exemption and determined Community Action was not a charitable corporation because residents were required to pay rent and Community Action received federal and state grants. The decision was appealed to the Board of Tax Appeals and the District Court which upheld the revocation of the charitable exemption. The Idaho Supreme Court agreed. The Idaho Supreme Court again cited the eight factors set forth in the Sunny Ridge case. The Idaho Supreme Court upheld its ruling in the Housing Southwest case that an organization which is funded by federal loans and grants, rather than private donations, is not entitled to a charitable exemption. 138 Idaho 86. In that case, the Idaho Supreme Court upheld the denial of the charitable exemption even though Community Action received significant amounts of both private contributions and federal funds. The Court also noted that exemptions must be reviewed each year and it is not unconscionable for a Board of Equalization to revoke an exemption previously granted.

Based upon the foregoing, because CO-AD is almost exclusively supported by government funds, CO-AD does not qualify for a charitable exemption pursuant to Idaho Code §63-602C.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Ada County Board of Equalization concerning the subject parcel be, and the same hereby is, affirmed.

DATED this 1st day of May 2007.